

1 **UNITED STATES BANKRUPTCY COURT FOR**
2 **EASTERN DISTRICT OF VIRGINIA**
3 **Richmond Division**

4
5 **In re:**)
6)
7 **CIRCUIT CITY STORES, INC.**) **Chapter 11**
8) **CASE NO. 08-35653-KRH**
9 **Debtor.**)
10 _____)

11 **CREDITOR JONATHAN CARD'S RESPONSE TO DEBTORS' THIRTIETH**
12 **OMNIBUS OBJECTION TO CLAIMS [DISALLOWANCE OF CERTAIN INVALID**
13 **CLAIMS, DOCKET NO. 11808]**
14

15 COMES NOW, Creditor Jonathan Card, through his undersigned counsel, pursuant to
16 Fed. R. Bankr. P. 3007, Local Bankruptcy Rule 3007-1(D), and this Court's April 1, 2009
17 Order Establishing Omnibus Objection Procedures and Approving the Form and Manner of
18 Notice of Omnibus Objections [Docket No. 2881], and responds to the Debtors' Thirty-First
19 Objection to Claims [Disallowance of Certain Legal Claims] [Docket No. 4585] and states as
20 follows:
21

22 **Argument**

- 23 1. The Debtors filed voluntary petitions under Chapter 11 of the Bankruptcy Code on
24 November 10, 2008 and continue to manage their affairs as debtors-in-possession.
25 2. On August 29, 2002, Creditor Jonathan Card filed his lawsuit on behalf of himself and
26 all other assistant managers employed by Debtors seeking overtime compensation,
27 compensation for missed meal and rest breaks, waiting time penalties and attorneys'
28 fees under California law. The class action-styled case, which is entitled *Card v. Circuit*
City, Inc., is filed in the San Diego Superior Court, Case No. 37-2008-00095260.

Creditor Jonathan Card seeks to represent all California-based assistant managers who were employed by Debtors and who were not paid overtime compensation, or provided meal and rest breaks.

3. On January 13, 2009, pursuant to this Court's Order regarding creditor claims, Creditor Jonathan Card - through his counsel - filed a timely creditor claim with the bankruptcy administrator, Kurtzman Carson Consultants.

4. Debtors are in exclusive possession of the information necessary for Creditor Card to value this claim in any more detail. Specifically, Debtors hold the payroll, employment and time records, including the pay rates and number of weeks worked by Creditor Card 180 days prior to November 10, 2008 (the Petition Date).

5. Further, since Debtors' filing of its voluntary petition, the trial court proceedings of Creditor Card have been stayed under Code of Civil Procedure section 916 and also pursuant to the federal bankruptcy law "automatic stay" rules. Due to the automatic stay, Creditor's counsel is prohibited from conducting discovery on any issues (certification, merits or damages) against Debtors that would be necessary to further evaluate Creditor Card's claim with more particularity.

6. Debtors' counsel has informed Creditor's counsel that this will be a "liquidating" bankruptcy. In addition, Debtors' counsel informed Creditor Card that given Debtors' limited financial resources, matters that would otherwise be returned to trial court(s) are being kept in the Bankruptcy Court in order to curb the cost of litigating claims.

7. Debtors' Objection, which seeks to disallow the claims of Creditor Card is improper. Creditor Card is prepared to respond in detail to any factual or legal grounds that Debtor believes would tend to support disallowance of this claim, yet without such information he is "shadow boxing" - unable to understand, let alone respond to, contentions and arguments that have to date not been disclosed. With its Objection, Debtors essentially seek to disallow Creditor Card's claims for reasons that are completely unknown and simply because they think proclaim "no liability." The only basis for the objection is the unremarkable conclusion that Debtors have decided the claims have no merit. This

1 kind of ipse dixit argument is as unsurprising as it is unhelpful to the Court's ability to
2 make a fair determination of the claim.

- 3 8. Card's claims arise under California law. Similar to federal law, wages have always
4 been afforded special status in California. The California Supreme Court has recently
5 explained the strong public policy supporting claims of this nature:
6

7 The public policy in favor of full and prompt payment of an
8 employee's earned wages is fundamental and well established: 'Delay
9 of payment or loss of wages results in deprivation of the necessities
10 of life, suffering inability to meet just obligations to others, and, in
11 many cases may make the wage-earner a charge upon the public.'
12 (*Kerr's Catering Service v. Department of Industrial Relations*
13 (1962) 57 Cal.2d 319, 326) California has long regarded the timely
14 payment of employee wage claims as indispensable to the public
15 welfare: "It has long been recognized that wages are not ordinary
16 debts, that they may be preferred over other claims, and that, because
17 of the economic position of the average worker and, in particular, his
18 dependence on wages for the necessities of life for himself and his
19 family, it is essential to the public welfare that he receive his pay
20 when it is due. [Citations.] An employer who knows that wages are
21 due, has ability to pay them, and still refuses to pay them, acts
22 against good morals and fair dealing, and necessarily intentionally
23 does an act which prejudices the rights of his employee." (*In re*
24 *Trombley* (1948) 31 Cal.2d 801, 809-810; see *Gould v. Maryland*
25 *Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137 [statute
26 criminalizing prompt payment violations shows "the policy involves
27 a broad public interest, not merely the interest of the employee"].)

28 *Smith v. Superior Court* (2006) 39 Cal.4th 77, 82.

1 In another case, the California Supreme Court explained:

2 Considerations of sound public policy buttress our conclusion. Labor
3 Code section 1194 confirms “a clear public policy ... that is
4 specifically directed at the enforcement of California's minimum wage
5 and overtime laws for the benefit of workers.” (citation omitted) As
6 defendant's own authority reminds us, California's overtime laws are
7 remedial and are to be construed so as to promote employee
8 protection. (citation omitted.) And, as we have recognized, “this state
9 has a public policy which encourages the use of the class action
10 device.” (citation omitted.) “By establishing a technique whereby the
11 claims of many individuals can be resolved at the same time, the class
12 suit both eliminates the possibility of repetitious litigation and
13 provides small claimants with a method of obtaining redress for
14 claims which would otherwise be too small to warrant individual
15 litigation.”

16 *Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 340.

- 17
18 9. This creditor is prepared to respond to any specific factual and/or legal arguments that
19 pertain to a fair determination of this claim.
20 10. Creditor Card has submitted a demand to Debtors’ counsel, based on Debtors’ counsel
21 expressing interest at resolving these claims. If the parties are not able to resolve these
22 claims informally, Creditor is prepared to litigate them in this Court or in California.

23 Respectfully submitted,

24 Dated: May 2, 2012

RIGHETTI GLUGOSKI, P.C.

25
26 s/ Michael Righetti

27 _____
28 Michael Righetti
Attorney for Creditor

PROOF OF SERVICE

STATE OF CALIFORNIA

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the action. My business address is Righetti Glugoski, P.C., 456 Montgomery Street, Suite 1400, San Francisco, California, 94104.

On Thursday, May 03, 2012 I served the foregoing document described as:

**CREDITOR JONATHAN CARD'S RESPONSE TO DEBTORS' THIRTIETH
OMNIBUS OBJECTION TO CLAIMS [DISALLOWANCE OF CERTAIN INVALID
CLAIMS, DOCKET NO. 11808]**

on the interested parties by administering a true copy either by facsimile or in sealed envelopes addressed as follows:


Paula Steinhilber Beran
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(X) VIA ECF ELECTRONIC MAIL

By emailing the above documents referenced to the recipients listed herein.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on Thursday, May 03, 2012, at San Francisco, California.


Sarah Minkus